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AUG 17 2006

OFFICE OF PETITIONS

In re Application of :
Lee W. Mueller :
Application No. 09/603,727 : **DECISION ON PETITION**
Filed: June 23, 2000 :
Attorney Docket No. SST-1070 :

This is a decision on the paper titled "PETITION TO WITHDRAW HOLDING OF ABANDONMENT (UNDER 37 C.F.R. 1.181) PETITION TO ACCORD FILING DATE FOR EXPRESS MAIL CORRESPONDENCE RECEIVED BY P.T.O (UNDER 37 C.F.R. 1.10(e))", filed June 9, 2006.

The petition under 37 CFR 1.181 is **GRANTED**.

The holding of abandonment is **WITHDRAWN**.

The petition under 37 CFR 1.10(e) is **DISMISSED AS MOOT**.

A Notice of Allowance was mailed on August 10, 2004. In response, Applicant timely filed an RCE, together with an IDS as a submission, on November 10, 2004. The Office next mailed a Notice on August 12, 2005, pointing out that the IDS lacked a statement as specified in 37 CFR 1.97(e). The Notice gave Applicant one (1) month to submit a proper IDS. The Notice stated that if Applicant did not submit a proper IDS, then the IDS would remain in the application file, but the noncomplying

information would not be considered. No reply to the August 12, 2005 Notice was received. As the IDS was the only submission filed with the RCE, the RCE lacked a submission as required by 37 CFR 1.114. Therefore the application was held abandoned, and a Notice of Abandonment was mailed on April 10, 2006.

The filing of an RCE reopens prosecution and withdraws the finality of the last Office action. Accordingly, the IDS submitted with the RCE did not require the statement as set forth in 37 CFR 1.97(e). This is evidenced by 37 CFR 1.97(a) and 37 CFR 1.97(b) (4).

37 CFR 1.97(a) states:

In order for an applicant for a patent or for a reissue of a patent to have an information disclosure statement in compliance with § 1.98 considered by the Office during the pendency of the application, the information disclosure statement must satisfy one of paragraphs (b), (c), or (d) of this section.

While 37 CFR 1.97(b) states:

An information disclosure statement shall be considered by the Office if filed by the applicant within any one of the following time periods:

(1) Within three months of the filing date of a national application other than a continued prosecution application under § 1.53(d);

(2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application;

(3) Before the mailing of a first Office action on the merits; or

(4) Before the mailing of a first Office action after the filing of a request for continued examination under § 1.114.¹

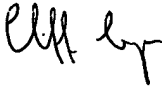
In view of the above, the holding of abandonment is withdrawn.

¹ Emphasis added.

Given the basis for granting this petition, the \$400 petition fee will be refunded to petitioner under separate cover.

The matter is being forwarded to Group Art Unit 3627 for consideration of the RCE and IDS, filed November 10, 2004.

Telephone inquiries regarding this decision should be directed to the undersigned at (571)272-3207.

A handwritten signature in black ink, appearing to read "Cliff Congo". The signature is written in a cursive, stylized font.

Cliff Congo
Petitions Attorney
Office of Petitions